POWERS — RELEASE OF SPECIAL POWERS IN GROSS. — Under a marriage settlement a fund of £60,000 was given in trust to A for life, and after her decease to her issue then living as she might by will appoint, and in default of appointment to her children in equal shares. By deed A covenanted with one of her children not to exercise her power of appointment in such a manner as to reduce his share to less than £7,000, nor so as to postpone the vesting in possession of such share beyond the period of her death. The provisions of the will were inconsistent with this agreement. *Held*, that the covenantee is entitled to £7,000 in possession, not under the deed but as in default of appointment. *In re Evered*, 102 L. T. Rep. 694 (Eng., Ct. of App., April 29, 1910).

For a discussion of the decision in the Chancery Division, see 23 HARV. L. REV. 394.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — EXCLUSIVE CONTRACT. — The defendant, a hotel keeper, made a contract with the plaintiff telephone company, giving it the exclusive right to install and maintain a telephone exchange in the hotel. *Held*, that the provision granting the exclusive right is void. *Central N. Y. Telephone & Telegraph Co.* v. *Averill*, 92 N. E. 206 (N. Y.).

This decision affirms that of the Supreme Court, discussed in 21 HARV. L. REV. 62.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — RIGHT TO TURN OFF WATER FOR NON-PAYMENT OF CHARGES. — The defendant city, engaged in furnishing water to its inhabitants, threatened to discontinue service to the plaintiff because of non-payment of charges. There was a *bonâ fide* dispute as to the amount due. *Held*, that the plaintiff may secure an injunction restraining such action, upon filing a bond guaranteeing the payment of any sum found to be owing. *City of Mansfield* v. *Humphreys Mfg. Co.*, 92 N. E. 233 (Oh.).

When a municipal corporation undertakes to supply its inhabitants with water or gas, it acts not by virtue of any rights of sovereignty but merely in the capacity of a private corporation. *Western Saving Fund Society* v. *City of Philadelphia*, 31 Pa. St. 175. And since it is engaged in public service, it is under obligation to serve all who come within its profession and tender the necessary charges. *Wood* v. *City of Auburn*, 87 Me. 287. Some courts have held that service may be discontinued where an undisputed bill remains unpaid. *Jones* v. *Nashville*, 109 Tenn. 550. But failure to exercise the right of withdrawal immediately, and acceptance of payment for water subsequently furnished, have been held to constitute a waiver of the right. *Wood* v. *City of Auburn*, *supra*. Other courts have held that non-payment of water rents by a former tenant of premises does not justify the company in refusing service to a new tenant. *Turner* v. *Revere Water Co.*, 171 Mass. 329. *Contra*, *Gerard Life Insurance Co.* v. *City of Philadelphia*, 88 Pa. St. 393. Where there is a *bonâ fide* dispute as to the amount due, it is generally held that the company may be enjoined from cutting off the supply. *McEntee* v. *Kingston Water Co.*, 165 N. Y. 27. In any case it would seem to be a violation of public duty to refuse present service upon tender of regular rates, on the ground of non-payment of past indebtedness.

RECEIVERS — CUSTODY OF PROPERTY BEFORE APPOINTMENT OF RECEIVER. — After a bill to dissolve an insolvent corporation had been filed and process served, but before the appointment of a receiver, property of the corporation was sold on execution, without the permission of the court. *Held*, that the sale was void. *Cobb* v. *Camden Savings Bank*, 76 Atl. 667 (Me.).

Property is received into the custody of the court impressed with all the exist-

ing rights and equities of creditors. *American Trust & Savings Bank* v. *McGettigan*, 152 Ind. 582. But when once *in custodia legis* it ceases to be subject to seizure and sale on execution without leave of court. *Chalmers* v. *Littlefield*, 103 Me. 271. In their determination of the precise stage in receivership proceedings at which property comes into *custodia legis*, the courts disagree. Maryland, following the old rule, places it at the time when the receiver actually takes possession of the property. *Farmers' Bank* v. *Beaston*, 7 Gill & J. (Md.) 421. The majority of the courts now accept the appointment of the receiver as marking the transition. *Squire* v. *Princeton Lighting Co.*, 72 N. J. Eq. 883. An increasing number of modern decisions, however, place the time as early as possible, and adopt the filing of the bill and service of process as the moment of the passing of the property into the custody of the court. *Riesner* v. *Gulf, Colorado & Santa Fé Ry. Co.*, 89 Tex. 656. This last view recognizes that a greater advantage is obtained by keeping the property intact while the court is deliberating as to its disposition, though the bill may finally be dismissed, than by allowing individual creditors more time in which to go against the property.

SHIPPING — LIABILITY OF SHIPPER OF DANGEROUS GOODS. — The defendant, a transportation company, shipped on a common carrier's barge ferro-silicon, billed as "ordinary cargo." The fumes killed the barge-owner and injured his wife. The defendant knew the name of the chemical, but was ignorant of its dangerous qualities. There was no negligence. *Held*, that the wife can recover. *Bamfield* v. *Goole & Sheffield Transport Co.*, [1910] 2 K. B. 94.

A shipper who knows of the dangerous nature of his goods is liable for any damage resulting from his omission to give notice to the carrier. *Boston & Albany R. Co.* v. *Shanly*, 107 Mass. 568; *Farrant* v. *Barnes*, 11 C. B. N. S. 553. But where neither *scienter* nor negligence is alleged, it has been doubted whether a shipper would be liable. *Per* CROMPTON, J., in *Brass* v. *Maitland*, 6 E. & B. 470, 491; LORD ELLENBOROUGH, C. J., in *Williams* v. *East India Co.*, 3 East 192, 200. The decision in the principal case, however, is not without precedent. *Pierce* v. *Winsor*, 2 Spr. (U. S.) 35; *Brass* v. *Maitland*, *supra*. See *Hearne* v. *Garton*, 2 E. & E. 66. The court rested its decision upon the ground that there was an implied warranty that the goods were safe, and that the shipper was liable for damage occurring from a breach of that warranty. This broad rule is unnecessary for the decision of the case. Billing ferro-silicon as "ordinary cargo" constituted a misrepresentation, and for damage resulting from the carrier's reliance on this description, the shipper should be liable. To imply a warranty that the goods are safe is subject to the two objections that it presumes as a fact what may not be the fact, and that it imposes undue hardship on the shipper.

STATUTES — INTERPRETATION — "PERSON OF THE NEGRO OR BLACK RACE." — A statute made concubinage "between a person of the Caucasian or white race and a person of the negro or black race" a felony. *Held*, that an octoroon (or person having one-eighth negro blood) is not a person of the negro or black race within the meaning of the statute. *State* v. *Treadaway*, 52 So. 500 (La.).

Most of the statutory definitions of the word "negro" are broad enough to include an octoroon. CODE OF ALA., 1907, § 2; GEN. STATS. FLA., 1906, § 1. But wherever the question has been considered by the courts independently of statutory definitions, their conclusions have been in accord with the principal case. *Felix* v. *State*, 18 Ala. 720; *Monroe* v. *Collins*, 17 Oh. St. 665. The miscegenation statutes of other states, where there is no arbitrary definition of the word "negro," to include a case like the present, invariably add to "negro" the words "or mulatto," "or person of negro descent to the third generation inclusive," or the like. STATS. KY., 1909, § 4615; REV. STATS. MO., 1899,